

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C. P. No. D – 1775 of 2021**

Date of hearing	Order with signature of Judge
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**Hearing of case**

1. For orders on office objection at Flag-A
2. For hearing of main case

**31-05-2022**

Syed Tarique Hussain, Advocate for the Petitioners.  
Mr. Agha Atta Muhammad, Advocate, holding brief for Mr. Qurban Ali Malano, Advocate for Respondents No.3 to 7.  
Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

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Through this Petition, the Petitioners have sought the following relief(s):

- a) *To declare act of issuing Circular Dated 16-11-2018 charging Non-Utilization Fee retrospectively w.e.f 24-10-2014 is illegal and without lawful authority hence of no legal effect.*
- b) *To issue writ of mandamus whereby restraining the Respondents from charging/recovering Non utilization fee retrospectively and further they may be restrained from acting otherwise than due course of law.*
- c) *To grant any other equitable relief as deemed fit by this Honourable Court in circumstances of the case.*

Though the question regarding non-utilization fee in respect of similar facts has been decided in the case reported as *Muhammad Ibrahim v. Sindh Industrial Trading Estate Ltd. (SITE) through Secretary (2019 CLC 817)*, wherein the judgment dated 03-05-2002 passed in C. P. No. D-333 of 2002 was followed; however, learned AAG has informed us that said judgment does not apply in the present case, as apparently, the Petitioners entered into a specific agreement to raise construction and utilized the land within certain period and in case of failure have agreed to pay non-utilization fee. The copy of lease agreement is annexed and the relevant clause reads as under:

“2. Upon payment by the Applicant to the Owner a fee of Rs.14520/- (Rupees fourteen thousand five hundred twenty only) and of rates taxes and other outgoings, the Applicant, his Agents, Servants, Employees, his contractors and other persons may enter upon the said land during the period of twelve calendar months from the \_\_\_\_\_ or during such extended period as the Owner may in writing grant, with or without conditions, for the purposes of compliance with the provisions hereof relating to the erection of the Factory agreed to be erected by the Applicant and for manufacturing of Blocks, Tiles & Cement Pipe provided that the tenant shall bring the demised land under full utilization within 12 months and in special circumstances within 18 months at the most, failing which a non-utilization fee at the prescribed rate, as amended by the Board from time to time, shall be payable on demand.”

From perusal of the aforesaid clause, it appears that the Petitioners have specifically agreed to pay non-utilization fee at the prescribed rate as determined by the Board of the Respondents from time to time if the land is not utilized in a maximum of 18 months. Therefore, apparently, the aforesaid judgments do not apply in the present facts and circumstances of this case. While confronted, Petitioners’ Counsel submits that as per instructions no basic facilities have been provided by SITE Limited. To that, it may be observed that this is a factual controversy and that has to be proved by the Petitioners by adducing evidence.

In view of hereinabove facts and circumstances of this case, no case for indulgence is made out. Accordingly, Petition being misconceived is hereby **dismissed**.

J U D G E

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Abdul Basit